

DATE: November 19, 2007

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In Re: )  
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SSN: ----- )

Applicant for Security Clearance )  
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ISCR Case No. 07-02695

**DECISION OF ADMINISTRATIVE JUDGE  
THOMAS M. CREAN**

**APPEARANCES**

**FOR GOVERNMENT**

Robert E. Coacher, Esq., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant is a painter for a defense contractor. His debts were discharged by Chapter 7 bankruptcy in 1991, and again in 2001. He now has a debt of \$47,000 from the repossession of his second house that he has not paid or made any attempts to resolve. He has not provided information to mitigate security concerns raised by his irresponsible actions concerning his finances. Clearance is denied.

**STATEMENT OF THE CASE**

On July 18, 2007, the Defense Office of Hearing and Appeals (DOHA) issued a Statement

of Reasons (SOR) detailing the basis for its decision to deny a security clearance for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), using the Adjudicative Guidelines promulgated by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on July 25, 2007. The SOR alleges security concerns under Guideline F (Financial Considerations), of the Directive.

Applicant answered the SOR in writing on July 30, 2007. He admitted the factual allegations in the SOR but denied the security concern raised under Guideline F. He provided an explanation for his financial problems. He elected to have the matter decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on August 23, 2007. Applicant received a complete file of relevant material (FORM) on September 5, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. His response was due October 5, 2007. As of November 1, 2007, he had not responded. The case was assigned to me on November 2, 2007.

### **FINDINGS OF FACT**

I thoroughly and carefully reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 46 years old and a painter for a defense contractor. He was married for over 19 years before his first wife died of cancer. There were two children from this marriage. He married again six years ago and has two step-children. He served in the Army for ten years and held a security clearance during that time. He also held a security clearance while working for other defense contractors. He submitted a security clearance application for his present position with the defense contractor on October 26, 2005.<sup>1</sup>

Applicant and his first wife filed a Chapter 7 bankruptcy in June 1991. His first wife was diagnosed with terminal cancer. They had expensive medical bills and his wife used their credit cards to buy an exceptional number of non-medical items. The bankruptcy was filed because they were not able to pay the medical or credit card bills. Their debts were discharged in October 1991. His first wife passed away in March 1996.<sup>2</sup>

Applicant filed a second Chapter 7 bankruptcy in February 2002, and his debts were discharged in May 2002. Applicant had been employed for over 18 years at the same defense contractor firm and was making a good salary. His company was purchased by another company and he was laid off. He secured other employment but at a salary about half of his prior salary. He could

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<sup>1</sup>Item 4.

<sup>2</sup>Items 3, 4, and 6.

not keep up with his debts because of the reduced salary.<sup>3</sup>

Applicant had two house, the first was paid and there is no mortgage on that house. However, his son lived in the house. The second house is a mobile home that he lived in which had a mortgage. When Applicant was laid off, this house was repossessed by the mortgage company when he was unable to pay the mortgage because of his decreased salary. There is a remainder debt of over \$47,000, from the repossession that Applicant has not paid or made any arrangements with the mortgage company to pay. Applicant now lives in the original house.<sup>4</sup>

Applicant's monthly income is \$1,900, with monthly expenses of \$1,260, leaving a remainder of \$690 monthly. He has \$4,200 in savings, and owns a car, motorcycle, and boat. He lists his assets as \$89,000. There are no other delinquent accounts listed on his credit report.<sup>5</sup>

## POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information."<sup>6</sup> Eligibility for a security clearance is predicated upon the applicant meeting the security guidelines contained in the Directive.<sup>7</sup>

Adjudicative guidelines for determining eligibility for access to classified information, and the disqualifying conditions and mitigating conditions for each guideline are set forth in the AG promulgated by the President on December 29, 2005, and implemented by the Department of Defense on September 1, 2006. Each clearance decision must be fair, impartial, and a commonsense decision based on the relevant and material facts and circumstances, and the whole person concept.<sup>8</sup>

The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation of

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<sup>3</sup>Items 3 and 7.

<sup>4</sup>Item 5.

<sup>5</sup>Items 6 and 8.

<sup>6</sup>*Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>7</sup>Directive ¶ E2.2.1.

<sup>8</sup>AG ¶ 2(a).

recurrence.<sup>9</sup>

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant.<sup>10</sup> It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the Applicant from being eligible for access to classified information.<sup>11</sup> Thereafter, Applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate facts.<sup>12</sup> An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”<sup>13</sup> The government is under no duty to present evidence to disprove any adjudicative guideline mitigating condition, and an Administrative Judge cannot assume or infer that any particular mitigating condition is applicable merely because the government does not present evidence to disprove that particular mitigating condition.<sup>14</sup> “[T]he Directive presumes there is a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.”<sup>15</sup> “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.”<sup>16</sup>

Conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, pertaining to the adjudicative guideline are set forth and discussed in the conclusions section below.

## **CONCLUSIONS**

I carefully considered all of the facts in evidence and the legal standards discussed above. I reach the following conclusions regarding the allegations in the SOR.

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<sup>9</sup>*Id.*

<sup>10</sup>*See* Exec. Or. 10865 § 7.

<sup>11</sup>Directive ¶ E3.1.14.

<sup>12</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); *see* Directive ¶ E3.1.15.

<sup>13</sup>ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

<sup>14</sup>ISCR Case No. 99-0597 (App. Bd. Dec 13, 2000).

<sup>15</sup>ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996) (quoting DISCR Case No. 92-1106 (App. Bd. Oct. 7, 1993))

<sup>16</sup>*Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

A security concern exists because a failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.<sup>17</sup>

The cause of debts and action taken or not taken to pay debts are a better indicator of a person's reliability or trustworthiness and judgment than the amount of debt. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligation to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. Irresponsibility towards financial obligations may be indicated by failure to take reasonable measures to pay or reduce debts. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

Applicant filed two bankruptcy actions and then had his second home repossessed. He has taken no steps to pay the \$47,000 owed on the repossessed home. His bankruptcy actions and his failure to act on the repossession debt brings the matter within Financial Considerations Disqualifying Conditions (FC DC) ¶ 19(a) (Inability or unwillingness to satisfy debts), and FC DC ¶ 19(c) (A history of not meeting financial obligations). Since Applicant admits the bankruptcies, the repossession, and that he has taken no action to resolve this debt, I conclude the above disqualifying conditions have been established.

Appellant's answer to the SOR raises a number of Financial Consideration Mitigating Conditions (FC MC). Applicant's first wife had expensive medical treatment for her cancer and ran up credit debts resulting in the first bankruptcy filing. The second bankruptcy was caused by Applicant being laid off from a good paying job requiring him to take a lesser paying job. These conditions raise FC MC ¶ 20(b) (The conditions that resulted in the financial problem were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances). His wife's illness and spending habits as well as his loss of employment were beyond his control. However, Applicant present no information to show that under the circumstances he acted reasonably. There is no indication of what actions, if any, he took or could have taken to control his debts to live within his means on a reduced salary. While this mitigating condition applies, I give it only partial weight.

Applicant has no delinquent debt other than the debt owed on the mobile home that was repossessed. His credit report shows he pays bills as agreed. His monthly salary and expenses shows he has a remainder sufficient to pay his debts. He is not now financially overextended. These circumstances raises FC MC 20(d) (The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts). He is paying his creditors and has resolved his debt other than the debt owed on the home repossession, so he receives some mitigating credit for his efforts to pay

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<sup>17</sup>AG ¶ 18.

creditors.

Applicant still has an unresolved debt on the home repossession. FC MC ¶ 20(a) (The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgement) is not raised since the debt is still owed and current and failure to take action on the debt does cast doubt on his judgment, trustworthiness, and reliability.

Bankruptcy is a legal and permissible means of paying and resolving debt. However, the circumstances leading up to the bankruptcy action and the actions of Applicant after debts are discharged should be examined to determine if Applicant acted reasonably and responsibly in regard to his finances. Applicant's first bankruptcy was caused by medical bills from his wife's illness and her spending habits. The second bankruptcy was filed after he lost lucrative employment and then worked at a reduced salary. The fact that he filed bankruptcy under the circumstances does not show he was irresponsible towards his finances, and he has mitigated security concerns based on the bankruptcies. Thereafter, his second home was repossessed and he still has a debt to the mortgage company of over \$47,000. He has taken no steps to resolve this debt. He has sufficient income to make payments on the debt. He has sufficient assets he can use to generate funds to use to pay the debt. He has not presented any information on steps taken to resolve the debt or why he cannot resolve it. This information does show that he is irresponsible in regard to his finances.

I carefully considered all of the circumstances in light of the "whole person" concept. I conclude Applicant is not eligible for access to classified information. Applicant has shown an irresponsible attitude toward his debts. He presented insufficient information to explain why he cannot pay or resolve the debt. He has failed to carry his burden to refute, extenuate, or mitigate the disqualifying conditions. I conclude Applicant has not mitigated the security concerns for financial considerations.

### **FORMAL FINDINGS**

Formal findings for or against Applicant on the allegations in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraph 1.a.:

For Applicant

Subparagraph 1.b.:

For Applicant

Subparagraph 1.c.:

Against Applicant

### **DECISION**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant or continue Applicant's access to classified information. Clearance is denied.

Thomas M. Crean  
Administrative Judge